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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

No. 916

EUGENE TUTTLE, et al.,
Petitioners and Appellants below,

vs.

JAMES C. BELL, County Treasurer and Ex-Officio County Collector of Will County, Illinois,
Respondent and Appellee below.

BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI

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JOLIET REPUBLICAN PRINTING COMPANY

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THE COMPLAINT LACKS NECESSARY ALLEGATIONS IN SUPPORT OF PETITIONERS' CLAIM FOR RELIEF.

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PETITIONERS' COMPLAINT DOES NOT SHOW THAT RURAL PROPERTY IS CLASSIFIED AND ASSESSED AT A DIFFERENT LEVEL OF ASSESSMENT THAN CITY PROPERTY.

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To The Honorable, The Chief Justice and Associate Justices Of The Supreme Court of the United States:

ARGUMENT

I.

THE COMPLAINT LACKS NECESSARY ALLEGATIONS IN SUPPORT OF PETITIONERS' CLAIM FOR RELIEF.

Respondent makes no additional statement of fact, but does submit that the complaint which was dismissed by the lower court on motion of the respondent, (defendant), which ruling was sustained by the Illinois Supreme Court, is notable for its failure to contain any reference whatever to the many elements which should be referred to in considering whether an assessment is in any manner contrary to law Petitioners use one element only upon which to base their argument.

That is, that in the fifteen months from January 1, 1938, to April 1, 1939, eighty farms were sold in Will County. (Rec. p. 9 and 10.) On these sales alone, without any showing that any of the farms sold were included in those owned by petitioners, the latter conclude that the assessed valuations of thousands of farms in the county (Rec. p. 17) is 34.49 per cent of their fair, cash, market values, and not 30 per cent as they were informed by the assessors. (Rec. p. 8.) Petitioners make insufficient allegations of fact on which to base their claim that rural property is assessed higher than urban property.

Petitioners do not see fit to allege the *actual values* of their farms, nor the full values as fixed by the various township assessors and as approved by the Supervisor of Assessments and by the Board of Review. Without such allegations of fact the Court should assume that the assessed value of each piece of property is, as petitioners were informed, 30 per cent of the full value as fixed by the assessors. Petitioners have failed to allege necessary facts. Opinion evidence, based on only one factor which ignores the other factors, "is not sufficient to establish gross over-valuation." (*People* v. *Hendrickson*, 373 Ill. 99.)

Petitioners fail to give any consideration to the many other necessary elements which go to show whether an assessment is fair, just, and lawful. They would have the Court ignore the judgment and experience of the assessors and the Board of Review, (*Porter* v. *R.R.I. & St.L.R.R.Co.*, 76 Ill. 561; *People ex rel Carr* v. *Stewart*, 315 Ill. 25), where they did not act from improper motives; (*People* v. *Norton*, 358 Ill. 272); that the good faith of the assessors and the validity of their actions must be presumed, (*Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350; *People* v. *Olympia Fields County Club*, 374 Ill. 101); that these farms were assessed at the same ratio as other farms of like kind and

character similarly situated; (*People* v. *Olympia Fields County Club*, supra; *People* v. *Wiggins Ferry Co.*, 357 Ill. 173; *People* v. *Goldberg*, 354 Ill. 423); that over-valuation will not, of itself, establish fraud; (*Burton Stock Car Co.* v. *Traeger*, 187 Ill. 9; *People* v. *National Plate Glass Co.*, 344 Ill. 340), and that equity will not lend its aid to a plaintiff unless even-handed justice and good conscience demand that relief should be granted. (*Harrison Parker* v. *Board of Appeals*, 367 Ill. 599; *First National Bank of Urbana* v. *Holmes*, 246 Ill. 352; *Williams* v. *Dutton*, 184 Ill. 608). Neither did petitioners complain that the full valuations as fixed by the assessors are excessive.

The Illinois Supreme Court decision does not appear to have refused petitioners any remedy, as it does not appear that the taxes complained of are illegal and discriminatory, and denies no rights guaranteed by the Fourteenth Amendment.

II.

PETITIONERS' REAL ESTATE IS NOT ASSESSED IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION.

If respondent is right in his claim that one element alone is insufficient to establish an excessive and discriminatory assessment, then petitioners' argument falls of its own weight, or has already fallen.

As respondent has heretofore pointed out, the petitioners fail to set out the full valuation fixed by the assessors. Respondent cannot escape drawing the conclusion that this was purposely done in order not to inform the Court what proportion the assessed valuation actually bore to the full valuation as fixed by the assessors. This being the case, this point must be held against the pleader.

Petitioners refer to a number of cases which they say are fact situations similar to the present case. In *Sunday Lake*

Iron Co. v. *Wakefield*, 247 U. S. 350, relied upon by them, this Court said:

> "It is also clear that mere errors of judgment by officials will not support a claim of discrimination. . . . . The good faith of such officers and the validity of their actions are presumed."

Even though the assessors' full valuations placed upon these farms were high, such fact exhibits nothing but an error of judgment.

The fact situation in *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, is entirely different from the instant case. In that case the Court said:

> "The board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different *principle* or followed a different *method* from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein stated, it was the action of the State through the Board. . . . . The most important function of the Board, that of equalization, ... was, in this instance, omitted and ignored . . . . It is not a question of a mere difference of opinion as to the valuation of property, but it is a question of difference of *method* in the manner of assessing property of the same kind. . . . ." (Italics ours.)

Here it is shown that all properties were debased, hence equalized, and, so far as the complaint shows, equalized at 30 per cent of the full valuations as fixed by the various assessors, as the petitioners were informed before the assessments were made.

In their argument to the Illinois Supreme Court petitioners went to some length to tell the Court that they were not com-

plaining of the *method* used, but only of the results arrived at, but here they seem to be complaining of *method.*

Sioux City Bridge Co. v. *Dakota County,* 260 U. S. 441, is said to involve "facts strikingly similar to those of the instant case." In that case *one alone,* the Bridge Company was assessed at its full value, while acre property was assessed at 55.7 per cent and city property at 49.29 per cent of their selling values. These facts are not at all similar, but are similar to that class of cases where *one alone* has been reduced to the level of others of like kind and character similarly situated. The Bridge Company's property was reduced to the level of assessment of acre property, and not to the level of city property. That put the Bridge Company *exactly* where the petitioners find themselves.

The same situation is found in *Brinkerhoff-Faris Co.* v. *Hill,* 281 U. S. 673. In that case the plaintiff alleged that its stock was assessed at full value, that some property was not assessed at all, and that all other property was assessed at about 75 per cent of its full value, and the Court held that the plaintiff had the right to have the assessment abated by 25 per cent, thereby placing the plaintiff in the exact position in which the petitioners are.

This situation is again found in *Iowa-Des Moines National Bank* v. *Bennett,* 284 U. S. 239, another case relied upon by the petitioners. Here the petitioners' bank stock was assessed at approximately a 30-mill rate, while local competing moneyed capital was assessed at only 5 mills, or one-sixth of what the petitioners were assessed at.

Substantially the same situation is true in *Cumberland Coal Co.* v. *Greene County,* 284 U. S. 23, and *U. S.* v. *Osage County,* 251 U. S. 128.

It is thus seen that in all of the cases relied upon by the petitioners none are based on "facts strikingly similar to those of the instant case." In none of the cases cited by

petitioners has this Court, or any other Court, taken a small number from a large class or group and ordered an abatement of the taxes below the level of assessment at which the vast majority of those in that group are assessed. Instead of this, where one alone has been assessed higher than others in the same group, kind, or classification, the Court has ordered an abatement to the level of assessment borne by others of like kind and character, as was done in *Sioux City Bridge Co.* v. *Dakota County,* supra, where the Bridge Company's property was reduced to the level of assessment borne by acre property and not to the level of assessment borne by city property.

It is therefore respectfully submitted that the allegations of the complaint do not bring the instant case within the principles enunciated by this Court, and that they are not entitled to the injunction asked by them.

III.

PETITIONERS' COMPLAINT DOES NOT SHOW THAT RURAL PROPERTY IS CLASSIFIED AND ASSESSED AT A DIFFERENT LEVEL OF ASSESSMENT THAN CITY PROPERTY.

The complaint alleges the assessed valuations of urban and rural property (rec. 9) based on 229 sales of "town and city lots in Will County" and 80 sales of "farm lands (7890.32 acres)." (Rec. 10.)

In its decision of this case the Illinois Supreme Court said:

> "Plaintiffs do not claim the taxing officials fraudulently valued their property too high. . . . . .
>
> "If plaintiffs' grievance is directed at an over-assessed valuation from which fraud is presumed, then they have failed to plead facts to which such presumption could be applied. The allegations in reference to over-assessment of farm lands are based

> on the sales values of 80 tracts of farm lands, but there is no allegation that any of the plaintiffs' lands formed a part of the 80 farms so considered, nor were any facts pleaded to show a similarity between any of the farms sold and the plaintiffs' lands."

This is exactly what respondent has been saying and the very thing that the petitioners are attempting to avoid. Petitioners would have their 158 farms reduced to what they claim is the level of assessment of urban property, without any showing that such is the level of assessment, other than the isolated sales of a few pieces of property, both rural and urban, over a period of fifteen months, none of which are shown to form a part of petitioners' lands, nor shown to be in any way similar, and would leave all the other thousands of farm owners assessed at what they claim is their present excessive, discriminatory level.

It would seem that the rule laid down in *Nashville Chattanooga & St. Louis Ry. Co.* v. *Browning*, 310 U. S. 362, is the rule applicable here. In that case two systems of assessment were used, one, by the local assessors, and, two, the Public Service Corporations by the Railroad and Public Utilities Commission. All local property was assessed at less than its fair value, while railroad and other public service corporations' properties were assessed at full value without any debasement whatever, and the Court said:

> "But were we to take judicial note of that which these minutes were offered to show, and therefore to regard the ground taken by the State Court as a strained evasion of the differentiation between utility property on the one hand and all the rest on the other, we would still find no denial of the equal protection of the laws. It must be emphasized that the Company makes no claim that its property is singled out from among other public service corporations for discrim-

> inations. *Its asserted grievance is common to the whole class.* We must put to one side all those cases relied on by petitioner which invoked the 14th Amendment against *discrimination invidious to a particular taxpayer.* (Cases omitted). And if the State Supreme Court chooses to cover up under a formal veneer of uniformity the established system of differentiation between two classes of property, an exposure of the fiction is not enough to establish its unconstitutionality. Fictions have played an important and sometimes fruitful part in the development of law; and the Equal Protection Clause is not a command of candor. So we are of opinion that such a discrimination, not invidious but long sanctioned and indeed conventional, would not be offensive to the 14th Amendment simply because Tennessee had reached it by a circuitous route." (Italics ours.)

Petitioners assume rather than show classification. They show 80 sales of farm lands out of the total of farms which "run to many thousands." (Rec. 17.) As previously and frequently pointed out in this argument, they fail to show the full valuation of any piece of property as fixed by the various assessors, nor do they allege any of the many facts which go to establish discrimination.

CONCLUSION

Respondent therefore respectfully submits that this case is not one calling for the exercise by this Court of its supervisory powers, and does not show that petitioners have been, or will be, deprived of rights guaranteed them by the Federal Constitution. Petitioners do not make such a case as should be presented to this Court for consideration, and they should not be granted the Writ of Certiorari.

Respectfully submitted,

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